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## BOOK REVIEWS

THE ESSENTIALS OF AMERICAN CONSTITUTIONAL LAW, by Francis Newton Thorpe. (New York: G. P. Putnam's Sons, 1917, pp. xii, 279.)

There are several good books that serve as texts in college classes on constitutional law, none, however, so excellent and up-to-date that there is not room for the "small, compact, authoritative book on the subject" which it has been Mr. Thorpe's aim to prepare. It is not likely, however, that the present volume will supplant texts now used in many institutions other than the University of Pittsburg where the author is professor of politics and constitutional law.

The general plan of the book is shown by the chapter headings: "The Supreme Law"; "The Law of Legislative Powers"; "The Law of Taxation"; "The Law of Commerce"; "The Law of Contracts and Property"; "The Law of the Executive Power"; "The Law of Judicial Power"; "The Law of State Comity, Territories, and Possessions"; "The Law of Limitations"; "The Law of Fundamental Rights"; "The Law of Citizenship."

It would be possible to quarrel with this arrangement of the subject, but objectionable though it may be, there is no reason why under someone of the headings, all the fundamental questions of constitutional law should not be discussed. This volume, however, totally ignores, or inadequately treats, many important subjects. To mention only a few instances: There is practically no consideration of the problem of judicial review. The student is nowhere told how American courts got the power to declare legislation unconstitutional, to what extent the power has been exercised, or what principles govern the courts in refusing validity to laws. There is no mention of the agitation, or of the literature it brought forth, regarding the recall of judicial decisions. A text book on American constitutional law which omits any adequate reference to the characteristic that distinguishes American constitutional jurisprudence from practically every other system in the world is surely incomplete and unsatisfactory. Such an omission cannot be accidental.

The same criticism may be made of the author's treatment, or rather lack of treatment, of due process, the police power, and social legislation. So far as the index and a tolerably careful examination of the book disclose—I confess that I have been unable to bring myself to read every word of the text—there is absolutely no mention of workmen's compensation, minimum wage laws, legislation applying to labor unions, or any of the questions that have caused such discussion in the law reviews, and that have divided the Supreme Court. The *Lochner* case, for example, is mentioned in two footnotes, once without comment, and the second time with the remarkable statement that the New York law was "sustained as a constitutional exercise by the State of its police power." The student will have a shock if, as this note advises him to do, he examines the dissenting opinions and checks up Mr. Thorpe's statement that "*the per contra* was 'the right of the in-

dividual to liberty of person and freedom of contract.'" Comment of my own is superfluous. Neither the Oklahoma Bank Case or the *Adair* case is cited anywhere in the discussion. There is no reference to the briefs of Mr. Justice Brandeis, Professor Frankfurter, and Miss Goldmark, or to the problems they discuss. In fact, the student reading this book will be utterly ignorant of the most significant phases of the modern problems regarding due process, freedom of contract, and social legislation.

Again, the Sherman Anti-Trust Law is cited once, in a footnote, and reference is made to the decisions on it, as "illustrations" of the power of Congress under the commerce clause, "to regulate hours of labor, wages, selection and use of material in the construction of vehicles engaged in such commerce; the education, training, and conduct of persons engaged in handling such commerce; the age of employment; and physical equipment for the welfare of employees, as well as tariff rates and other incidents." After this remarkable statement it is not surprising to find that there is no reference to restraints of trade at the common law or under statute, or the "rule of reason," or, in fact, any of the trust cases. There is of course no mention of patents and the Sherman Law. The war power of Congress is treated in less than a page, and although this book has apparently been written since America's entrance in to the war there is no mention of the enormously increased powers of the President, the extension of federal control over the economic life of the country, individual rights like freedom of the press, and martial law. These subjects are of course sufficiently important to deserve treatment at any time; but their omission from a text book published in December, 1917, is unexplainable. Even if Mr. Thorpe was not familiar with previous constitutional law texts or law reviews, the newspapers would have given him his material.

Were I to attempt to pick out individual statements and criticise them this review would have to be a leading article. But I select a few remarkable remarks at random and set them down without comment:

"Every question in constitutional law, in the United States, sooner or later leads back to a question of sovereignty. What that sovereignty is can be known only by its operation, that is, by political experience. What powers are delegated by the Constitution is the question answered (at least in part) by courts of law and legislatures, by publicists and by the actual administration of government. \* \* \* The issue involved is, fundamentally, one of *functions*, and is viewed at different times with different understandings. As a practical question, it is one of *jurisdiction* as legally understood but as a question of *service* as politically understood." (p. 17, note.)

The Sixteenth Amendment to the Constitution "makes Congress practically sovereign in its power to impose such taxation and to collect such taxes. It does not require that direct taxes, like indirect taxes, shall be 'uniform throughout the United States.' It is the first departure in America from the doctrine of limited government." (p. 23-24.)

"The power of Congress to establish post offices and post roads is

not an exclusive power, for the States are not prohibited to legislate on the same subject. But Congress has unlimited power over it and may designate what may be included in and what may be excluded from the mails. This exercise is doubtless of the police power." (p. 42.)

"It is not the delegation to Congress of power to regulate commerce that makes the exercise of a similar power by the State void; it is the actual exercise by Congress of its power to regulate commerce that works the prohibition. \* \* \* This means that sovereignty acting through the State government controls—or has jurisdiction—unless sovereignty has acted in the matter through the government of the United States." (p. 74.)

But sufficient evidence has been given, I think, to justify my prediction in the first paragraph of this review.

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